IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

L.Rs. of late Bhanwar Lal	vs.	Urban Improvement Trust, Udaipur

S.B.Civil Second Appeal No.21/1982 under Section 100,C.P.C. Against the judgment and decree dated 4.9.1981 passed by Addl. District Judge, Udaipur in Civil First appeal No.22/80.

Date of Judgment: January 05,2006.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr.R.K.Thanvi, for the appellant.
Mr. Lalit Kawadia for the respondent.

BY THE COURT:

The appellant filed suit for permanent injunction against the respondent-Urban improvement Trust,Udaipur (for short 'the UIT') with allegations that the plot no.8 in Suraj Pole, Delhi Gate Scheme, Udaipur was purchased by him in auction on 11.12.1961. The plaintiff deposited 1/4th of total cost of the land which was Rs.19,000/- at the time of auction. Thereafter, the plaintiff deposited balance amount before the UIT. Since there was some delay, therefore, the plaintiff also paid interest over the balance amount which was accepted by the defendant-

respondent UIT. The allotment letter was issued in favour of the plaintiff-appellant on 13.2.1962 by the defendant-respondent. The possession of the plot was handed over to the plaintiff on 25.10.1969. Inspite of all above facts, the plaintiff faced with threat of his eviction from defendant U.I.T.'s officials on 7.4.1970, filed the suit for permanent injunction on 11.4.1970.The plaintiff pleaded in his plaint that the size of his plot is 4910 sq.ft 2-1/2 sq.inch. The defendant-respondent submitted the written statement and admitted that the plot in question was allotted to the plaintiff (as plaintiff purchased it in auction) on 13.2.1962. The total area of the plot was 4404-1/4 sq.ft. and not 4910' and 2.6". It is also admitted that the allotment letter for this size of the plot was issued in favour of the plaintiff. According to the defendant, the plaintiff by manipulation changed the figure 4404-1/4 sq.ft. to 4910 sq.ft. However, the defendant stated that on 7.1.1970 the inspector of the UIT submitted a report that some land has been encroached upon by the plaintiff, upon which on 9.1.1970, the plaintiff was asked to remove the encroachment and a notice was served upon the plaintiff. When the plaintiff did not remove his encroachment then the employees of the UIT went on the plot on 17.1.1970 and removed the plaintiff's encroachment. It is also submitted that since the plaintiff did not comply with the terms and conditions of the allotment letter and did not raise construction in time, therefore, the allotment of plot

was cancelled by order dated 8.4.1970. The defendant also submitted that the plaintiff filed the suit against the defendant-UIT but without serving a notice as required under Section 98 of the Rajasthan Urban Improvement Trust Act,1959 (for short "the Act of 1959").

The plaintiff submitted rejoinder and disputed the contentions of the defendant and again reiterated that he was given possession of the plot measuring 4910 sq.ft. and for that a revised plan was issued and the possession of the same size of the plot was given to him. The trial court framed the issues and it was the specific issue whether the plot size was 4404-1/4 sq.ft. or 4910-1/4 sq.ft. An issue was also framed what is the effect of the cancellation of allotment of the plot and whether the suit of the plaintiff is not maintainable as has been filed without serving notice upon U.I.T. under Section 97 of the Act of 1959. The trial court held that the plaintiff encroached upon 449 sq.ft. of land. However, the defendant already admitted that plot in question was allotted to the plaintiff having measurement 4404-1/4 sq.ft. Therefore, the trial court held that the plaintiff cannot be dispossessed from the plot which was allotted to the plaintiff by the defendant without following due process of law. It will be relevant to mention here that so far as issue about effect of the cancellation of the allotment order for the plot of the plaintiff is concerned, the trial court observed that the plaintiff did not challenge the cancellation order dated 8.4.1970 and did not pay the

court fee, therefore, this issue requires no decision and the trial court deleted the issue by saying issue (no.4) cancelled. The trial court also observed that in view of the specific provision under sub-section (4) of Section 98 of the Act of 1959, the suit of the plaintiff was maintainable without notice as it has been filed for mere relief of injunction. Ultimately, the trial court decreed the suit of the plaintiff for the land measuring 4404-1/4 sq.ft. Being aggrieved against the judgment and decree dated 12.11.1975, the defendant-respondent preferred appeal. The plaintiff also submitted cross-objections against the finding recorded by the trial court for rest of the land. The appellate court decided issue no.5 and held that the suit of the plaintiff was not maintainable as it was filed without serving notice upon the respondent-UIT under Section 98 of the Act of 1959.The first appellate court also reversed the finding of the trial court on issue no.6, which bars the suit against U.I.T. from any suit or prosecution when the action of the trust, trustee or officer and servant of the trust is done in good faith, with due care, lawfully. The first appellate court held that action of the respondent UIT is protected under Section 97 of the Act of 1959. Ultimately, the appeal of the appellant-respondent was allowed and the suit of the plaintiff was dismissed by the first appellate court by judgment and decree dated 4.9.1981. Hence this second appeal.

This second appeal was admitted by this Court on 20.7.1982 after framing the following substantial questions of law:-

> *"(a) whether the suit of the plaintiff was not saved by provisions of sub-section 4 of Section 98 of the Rajasthan Urban Improvement Trust Act, 1959 ?*
>
> *(b) Whether the first appellate court was right in holding that the suit was barred by Secton97 of the Rajasthan Urban Improvement Trust Act?"*

The learned counsel for the appellants pointed out that when there was a decree for injunction in favour of the appellant-plaintiff, against the defendant-UIT in this very litigation, the appellant-plaintiff was dispossessed by the UIT unlawfully, upon which the plaintiff, present appellant preferred S.B.Civil Writ Petition No. 28/1976.Though the writ petition of the plaintiff was dismissed on 4.2.1976 but the Division Bench of this Court by judgment dated 7.11.1984 not only allowed D.B.Civil Special Apeal No.15/1976 preferred by the plaintiff-appellant but the Division Bench directed the respondent-UIT, Udaipur to restore the possession of the plot of land in question to the appellant. It was made clear by the Division Bench in the said judgment that the UIT, Udaipur shall be free to take proceedings for dispossession of the appellant in accordance with law after giving an opportunity of hearing to the petitioner. According to the learned counsel for the appellants,

after the decision of the Division Bench referred above, the possession of the plot was handed over to the plaintiff and the plaintiff is in possession of the plot in question till today.

The learned counsel for the appellants submits that present appeal was preferred in the year 1981 and the Division Bench has decided the D.B.Civil Special Appeal No.15/76 thereafter on 7.11.1984 and granted the relief which plaintiff sought in the suit and which was granted by the trial court but reversed by the first appellate court. The Division Bench, while deciding D.B.Civil Special Appeal No.15/76, took note of the fact of pendency of this appeal. The Division Bench also noticed that there were two more litigations pending but they were not very much relevant for the purpose of deciding D.B.Civil Special Appeal No.15/76. However, the Division Bench passed the order as referred above directing the UIT to handover the possession of the plot in question to the plaintiff with liberty to the UIT, Udaipur for taking proceedings for dispossession of the appellant after following the due process of law. The learned counsel for the appellants submits that in view of the Division Bench decision, this appeal can be disposed of maintaining the relief in this suit also which was granted by the Division Bench by deciding D.B.Civil Special Appeal No.15/76. The learned counsel for the appellants also submitted that otherwise also the judgment and decree of the first appellate court reversing the judgment

and decree of the trial court is absolutely illegal, rather contrary to law. The learned counsel for the appellants submits that sub-section (4) of Section 98 of the Act of 1959 clearly provides that the entire sub-section (1) of Section 98 pre-notice to the UIT shall not be applicable in a case where "the only relief claimed in the suit is an injunction of which the object would be defeated by the giving of the notice of the postponement of the commencement of the suit or proceeding." The facts of the case clearly reveal that there was threat against the plaintiff's possession which was given only on 7.4.1970 by the officers and employees of the UIT and the suit was filed on 11.4.1970 and an injunction was also sought in the suit by the plaintiff and the plaintiff filed the suit for only relief of injunction. Therefore, the plaintiff had no option but to file the suit without any delay otherwise whole object of suit would have frustrated and the court may have refused injunction on the ground of delay in filing suit. The appellate court failed to consider this aspect of the matter and reversed the finding of the trial court on the issue of notice. It is also submitted that the defendant-respondent cannot seek any protection under Section 97 in the facts of this case because the Division Bench, in this controversy, clearly held that the UIT had no authority to evict the plaintiff-appellant from the plot in dispute without following the due procedure of law and the Division Bench of this Court restored the possession of the plaintiff-

appellant, therefore, there cannot be finding by any court contrary to the finding recorded by the Division Bench of this Court to declare the action of respondent-UIT being “bona fide” and “in good faith” and “in accordance with law”. If the suit of the plaintiff is declared barred under Section 97of the Urban Improvement Act, 1959 then it will be nothing but will amount to declare the action of respondent bona fide, in good faith and in accordance with law. In view of the above, both the substantial questions of law deserves to be decided in favour of the appellant.

The learned counsel for the respondents vehemently submitted that the plaintiff manipulated the deed which was issued by the UIT in favour of the plaintiff for the plot in question, by increasing the area of plot therefore, the plaintiff is not entitled for any equitable relief. Therefore, the first appellate court was right in dismissing the suit of the plaintiff. It is also submitted that the plaintiff cannot get relief more than the land for which he was given allotment letter by the UIT. It is also submitted that the plaintiff did not serve any notice upon the respondent-UIT, therefore, the plaintiff has no right to seek injunction order against the UIT.

I considered the submissions of the learned counsel for the parties and perused the record. It is clear from the facts of the case that the plaintiff filed the suit for only relief of injunction as otherwise he would

have faced his dispossession. He faced threat on 7.4.1970 and he sought the injunction against the UIT, Udaipur by filing suit immediately on 11.4.1970, within four days from the threat. The plaintiff-appellant sought injunction and which was granted in favour of the plaintiff in the suit and when the plaintiff was dispossessed illegally, the possession of the plaintiff was restored by the order of the Division Bench, therefore, in the facts of this case, the plaintiff's suit was maintainable without notice as provided under sub-section (4) of Section 98 of the Act of 1959 and the issue no. (a) referred above deserves to be decided in favour of the appellants and hence decided in favour of the appellants. After the decision of this Court in D.B.Civil Special Appeal No.15/76 dated 7.11.1984, no plea can be raised by the respondent-UIT about their action being bona fide, in good faith, with due care and lawful `when the Division Bench held that the petitioner was unlawfully dispossessed. In view of the above, the suit of the plaintiff was not barred under Section 97 of the Act of 1959 and the substantial question of law no. (b) is also decided in favour of the appellant.

Otherwise also when the Division Bench of this Court passed the order to restore the possession of the plot to the plaintiff and since this order has attained the finality, therefore, the defendant has no right to dispossess the appellants from the plot in question without following due process of law.

In the light of above discussion, the appeal of the appellants deserves to be allowed and hence allowed. The judgment and decree passed by the first appellate court dated 4.9.1981 is set aside. The judgment and decree of the trial court dated 6.12.1975 is restored. At this stage, it is observed that in case there is no hurdle in regularizing of the plot in favour of the plaintiff, which was purchased by the plaintiff in the year 1961 and which was alleged to have been cancelled in the year 1971, after nine years and in the facts of the case the plaintiff was granted relief of restoration of the possession by the Division Bench of this Court, the plaintiff's case for regularization of the plot may also be considered in accordance with law under the Act of 1959 after taking into account the fact that the plaintiff also deposited the entire cost of the land long ago, more than 20 years ago. However, it is made clear that the plaintiff's allotment letter is for the land measuring 4404-1/4 sq.ft and there was no claim nor he can claim protection of his possession or lease over any excess land than this.

(PRAKASH TATIA),J.

mlt.